

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES ANTHONY BROOKS,
Plaintiff,

v.

CHARLES EDWARDS BROOKS,
Defendant.

Case No. 16-01174 BLF (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner at San Quentin State Prison ("SQSP"), filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against Defendant Charles Edwards Brooks. Plaintiff's motion for leave to proceed *in forma pauperis* will be granted in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim

1 upon which relief may be granted or seek monetary relief from a defendant who is immune
2 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
3 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
5 elements: (1) that a right secured by the Constitution or laws of the United States was
6 violated, and (2) that the alleged violation was committed by a person acting under the
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff states that he filing this complaint against Defendant Charles Edwards
10 Brooks for "identify theft, racketeering, bankruptcy, bank fraud[,] etc." (Compl. at 3.)
11 Plaintiff also discusses a lottery ticket which he claims he mailed to a federal office in
12 Washington D.C. (*Id.*) Plaintiff seeks a "refund," specifically that the U.S. District Court
13 would "pay the full amount that was tak[en] away from Plaintiff on all Lottery Tickets
14 submitted to the Courts on September 5, 2014." (*Id.*)

15 Plaintiff mentions that he filed a previous action against the same Defendant under
16 *Brooks v. Brooks*, Case No. 14-03838 DMR, which was dismissed on November 4, 2014,
17 for failure to prosecute. (Compl. at 1.) In that case, Plaintiff claimed "fraud[,] identify
18 theft, requesting to file[] a lawsuit against family for racketeering, theft[,] bankruptcy,
19 bank fraud," and also sought assistance in obtaining lottery tickets which he mailed to
20 Washington D.C. *Brooks v. Brooks*, Case No. 14-03838 DMR, (ECF No. 1 at 3). The
21 Court also notes that Plaintiff currently has another civil action pending against the same
22 Defendant based on the same allegations and seeking the same relief. *See Brooks v.*
23 *Brooks*, Case No. 15-05237 HRL (PR).

24 Duplicative or repetitious litigation of virtually identical causes of action is subject
25 to dismissal under 28 U.S.C. § 1915 as malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021
26 (5th Cir. 1988). An *in forma pauperis* complaint that merely repeats pending or previously
27 litigated claims may be considered abusive and dismissed under § 1915. *Cato v. United*

1 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey*, 846 F.2d at 1021. An *in forma*
2 *pauperis* complaint repeating the same factual allegations asserted in an earlier case, even
3 if now filed against new defendants, therefore is subject to dismissal as duplicative.
4 *Bailey*, 846 F.2d at 1021; *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th Cir. 1975).

5 Plaintiff is seeking leave to proceed *in forma pauperis*, as he has in the two actions
6 discussed above. This is now Plaintiff's third *in forma pauperis* action filed against the
7 same Defendant in which he repeats the same claims. It is therefore subject to dismissal
8 under § 1915 as abusive. *See Cato*, 70 F.3d at 1105 n.2; *Bailey*, 846 F.2d at 1021.


9
10 **CONCLUSION**

11 For the foregoing reasons, the complaint is DISMISSED as duplicative and abusive.
12 *See* 28 U.S.C. § 1915.

13 **IT IS SO ORDERED.**

14
15 **Dated:**

July 15, 2016

16 
17 BETH LABSON FREEMAN
18 United States District Judge
19
20
21
22
23
24
25

26 Order of Dismissal
27 PRO-SE\BLF\CR.16\01174Brooks_dism(dup)
28